

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA

Plaintiff,

v.

Criminal Action No. 1:03CR39-01
(STAMP)

MATEEN J. ABDUL-AZIZ,

Defendant.

MEMORANDUM OPINION AND ORDER
DECLINING TO ADOPT AND AFFIRM REPORT
AND RECOMMENDATION OF MAGISTRATE JUDGE
AND GRANTING MOTION FOR RETURN OF PROPERTY

I. Procedural History

The defendant, Mateen J. Abdul-Aziz, filed a motion requesting the return of personal property pursuant to Federal Rule of Criminal Procedure 41(g). This matter was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B). Following review, Magistrate Judge Kaull submitted a report and recommendation on November 18, 2008, recommending that the defendant's motion be denied without prejudice because the motion was premature as a direct appeal was still pending with the Fourth Circuit.

The magistrate judge informed the defendant that if he objected to any portion of the recommendation for disposition, he must file written objections within ten days after being served with a copy of the recommendation. The defendant filed timely objections to the report and recommendation. For the reasons set

forth below, this Court finds that it should decline to adopt the report and recommendation by the magistrate judge and that the defendant's motion for return of personal property should be granted.

II. Facts

On March 1, 2003, police seized \$2,444.00 from the defendant during a traffic stop in Pennsylvania. The defendant states that during his federal criminal proceedings, the money was turned over to Assistant United States Attorney John C. Parr. The United States did not take steps to forfeit the money.

On September 26, 2008, the defendant appealed his sentence to the Fourth Circuit Court of Appeals. The United States acknowledged that the money should be returned to the defendant should the Fourth Circuit deny his appeal. On August 14, 2009, the Fourth Circuit dismissed the defendant's appeal and on September 1, 2009, denied the defendant's petition for rehearing and rehearing en banc.

III. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because the defendant has filed

objections, this Court will undertake a de novo review as to those portions of the report and recommendation to which objections were made.

IV. Discussion

Federal Rule of Civil Procedure 41(g) states as follows:

(g) Motion to Return Property. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

Fed. R. Civ. P. 41(g). The magistrate judge correctly stated that a court should grant a Rule 41(g) motion where the movant can legally claim title to the property, the government no longer needs the seized property as evidence, and the seized property is not contraband or subject to forfeiture. United States v. Mills, 991 F.2d 609, 612 (9th Cir. 1993). The magistrate judge stated that it is "undisputed" that the property lawfully belongs to the defendant. It is also undisputed that the government did not present the defendant with a notice of forfeiture.

At the time the magistrate judge issued the report and recommendation, the defendant's appeal was still pending and the United States claimed that if the defendant's appeal was successful, the money needed to be retained as evidence. Because the defendant's direct appeal is now final, this Court will grant

the defendant's motion for return of his personal property pursuant to Rule 41(g).

V. Conclusion

Based upon a de novo review, this Court finds that it should decline to adopt the report and recommendation of the magistrate judge because of the finality of the defendant's appeal. Accordingly, for the reasons set forth above, the defendant's motion for return of property is GRANTED.

IT IS SO ORDERED.

The Clerk is directed to transmit copies of this order to the defendant by certified mail and to counsel of record herein.

DATED: September 25, 2009

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE